

# SULLIVAN & BARROS, LLP

Real Estate | Zoning | Land Use

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D.C. OFFICE OF ZONING

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January 8, 2014

**By Hand Delivery**

Lloyd Jordan, Chairman  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW  
Suite 210S  
Washington, DC 20001

Re: **Post Hearing Submission of the Applicant: BZA Application No. 18659; 4540 Lowell Street, NW; Square 1608, Lot 68**

Dear Chairman Jordan and Members of the Board,

Enclosed please find an original and ten (10) copies (where applicable) of the following, in response to the Board's requests at the November 19, 2013 hearing:

- 1) The Applicant's draft Findings of Fact and Conclusions of Law;
- 2) A further Statement of Action and Analysis from the Applicant's Structural Engineer;
- 3) A more detailed Sun Study demonstrating the lack of sunlight to the party opponent's front bay window from the north side of the Applicant's house in the area of the nonconforming structure.
- 4) An elevation showing the reduction in height from the previous covered porch to the existing Front Room.
- 5) The Applicant has requested from DCRA, but not yet received, copies of the building permit applications. He will send them as soon as he receives them from DCRA.

Sincerely,



Martin P. Sullivan

enclosures

BOARD OF ZONING ADJUSTMENT  
District of Columbia  
CASE NO. 18659  
EXHIBIT NO. 41

Board of Zoning Adjustment  
District of Columbia

CASE NO. 18659  
www.sullivanbarros.com  
EXHIBIT NO. 41

**Item #1**

**Applicant's Draft Findings of Fact and Conclusions of Law**

**[APPLICANT'S DRAFT]**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment**



**Application No. 18659 of Elodie Goirand and Andreas Xenophontos**, pursuant to 11 DCMR §§ 3103.2, for a variance from the side yard requirements of § 405 and from the front yard setback requirements of § 1543.4, to allow the construction of a portion of a new house which extends into the required side and front yard setbacks in the WH/R-1-B District at premises 4540 Lowell Street, N.W. (Square 1608, Lot 68).<sup>1</sup>

**HEARING DATE:** November 19, 2013  
**DECISION DATE:** January 29, 2014

**Decision and Order**

This self-certified application was submitted August 23, 2013 by Elodie Goirand and Andreas Xenophontos (collectively, the “Applicant”), the owners of the property that is the subject of the application. The application was originally filed pursuant to 11 DCMR § 3103.2 for an area variance from the front yard setback requirement under § 1543.4 and § 223 special exception relief from the side yard setback requirement of § 405.9 to allow the construction of a 10.4’ by 10.9’ one-story portion of what is otherwise a new matter-of-right one-family dwelling in the WH/R-1-B District at premises 4540 Lowell Street, N.W. (Square 1608, Lot 68). Prior to the hearing, the Applicant requested leave to amend the application to include area variance relief for the side yard setback, in place of the originally requested § 223 special exception relief. The Board granted that request at the hearing. Following a public hearing on November 19, 2013, the Board of Zoning Adjustment (the “Board”) voted \_\_\_\_ on January 29, 2012, to grant the application.

**PRELIMINARY MATTERS**

**Notice of Application and Notice of Public Hearing.** By memoranda dated \_\_\_\_\_, 2013, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3D, the ANC for the area within which the subject property is located; and the single-member district ANC 3D-01. Pursuant to 11 DCMR § 3112.14, on \_\_\_\_\_,

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<sup>1</sup> The application originally sought special exception relief for the side yard setback relief, but prior to the hearing the Applicant amended that request to be for area variance relief.

2013 the Office of Zoning mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 3D. Notice was published in the *D.C. Register* on \_\_\_\_\_ (\_\_\_\_ DCR \_\_\_\_).

Party Status. The Applicant and ANC 3D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Peter G. Baker, who owns the property abutting the subject property at 4546 Lowell Street, NW. Mr. Baker submitted documents, and provided testimony at the hearing, which focused mostly on the matter-of-right portions of the new construction and were not relevant to the Board's consideration of the requested relief. To the extent Mr. Baker's testimony and evidence was relevant to the requested relief, it was not sufficient to rebut the Applicant's showing that there would be, at worst, minimal impact on the party opponent's property from granting the requested relief.

Applicant's Case. The Applicant provided evidence and testimony describing the condition of the property and improvements and the situation regarding the permitting and inspection history of this project, and asserted that the application satisfied all requirements for approval of the requested zoning relief.

Government Reports. By report dated November 12, 2013, and through testimony at the public hearing, OP recommended denial of the requested variances.

ANC Report. By letter dated November 12, 2013, at a regular, duly noticed monthly public meeting held on November 6, 2013, with a quorum present, the ANC voted 10-0-0 to deny approval of the Application.

Persons in opposition. The Board heard testimony from George Watson, the President of the Wesley Heights Historical Society. Mr. Watson testified as an individual on his own behalf, and was not testifying on behalf of the Wesley Height Historical Society.

## **FINDINGS OF FACT**

### ***The Subject Property and Surrounding Area***

1. The subject property is located at 4540 Lowell Street, Square 1608, Lot 68.
2. Lot 68 is a rectangular shaped interior lot with a land area of 7,500 square feet. The lot is approximately 75 feet wide and 100 feet long.
3. The subject property is located in the WH/R-1-B Zone District.
4. The subject property is currently improved with what the Zoning Administrator has determined to be a new three-story one-family dwelling. This dwelling replaced a smaller one-family dwelling that was built around 1930.

5.     The original dwelling included an open front porch with a peaked roof and columns at the northwest corner of the structure. When the Wesley Height Overlay Front Yard Setback Requirements of the Zoning Regulations were adopted in 1992, the front porch became a legally nonconforming structure.
6.     Peter Baker, party opponent, lives with his wife Sally, immediately to the west of the subject property, at 4546 Lowell Street, NW, in a one-family dwelling.
7.     At the front of the subject property is a very large Japanese Cherry Whipping Tree. At the front of the Bakers' property is a mature tree located in the area between the Bakers' front bay window and the street. According to aerial and other photographs submitted by the Applicant, this area of Lowell Street has a very dense tree canopy.

***The Applicant's Project***

8.     The Applicant received a building permit in November of 2012 to construct what DCRA had originally determined to be an addition to the original dwelling. As part of the proposed plan, the Applicant retained portions of the original dwelling's foundation, all of the below-grade level, the main utility lines, and portions of the structural walls on the west side of the structure. No part of the exterior surface walls of the original dwelling were to be retained.
9.     The Applicant proposed retaining the existing nonconforming porch and constructing walls to make this area part of the house, which was permitted as a matter-of-right. DCRA approved this aspect of the Project.
10.    The Applicant's proposed project complied in all respects with the Zoning Regulations, including the more restrictive lot occupancy and Gross Floor Area limits of the Wesley Heights Overlay District.
11.    In the course of the construction, the Applicant discovered that portions of the structural wall originally intended to be retained were rotted from weather damage and termite activity. The Applicant removed these portions of the structural walls during the week of February 11, 2013.
12.    On May 9, 2013, Mr. Robert Neubauer of Neubauer Consulting Engineers, P.A, sent the Applicant a letter stating that he had investigated photographs of portions of the removed structural walls and determined from these photographs that the wood from these walls had a considerable amount of moisture-related issues, including mold, rot, and termite damage. Mr. Neubauer further stated that the bottoms of sill plates, and wall sheathing all seemed to be severely affected. He also noted that the photographs revealed that the original rafters over the covered porch were inadequate as the seat cuts for the rafters protruded to the inside well beyond the top plate of the wall, contrary to acceptable practice.

13. On November 14, 2013, Mr. Neubauer wrote a second letter to clarify his position that the investigation noted in his May 9<sup>th</sup> letter related to several sections of the previously existing west walls and the existing rafters over the front mudroom/entry (the porch).
14. On February 27, 2013, in response to complaints from the Bakers, DCRA's illegal construction inspector, Robert Cluff, visited the subject property for a comprehensive compliance review. Following his inspection, Mr. Cluff noted in his inspection report that the "owner/architect for the construction work at the above address, will revise current drawings & permits to reflect actual conditions." No violation was issued and work continued unabated.
15. On March 12, 2013, Mr. Cluff again visited the subject property, after which he filed a report which stated "As stated on my previous inspection, all current work is proceeding, per the approved set of drawings." Accordingly, no violations were issued.
16. On March 14, 2013, Mr. Cluff made a third inspection, after which he filed an inspection report that stated: "Owner has obtained all current construction permits."
17. During the week of April 8, 2013, the legally nonconforming covered porch was converted into an interior portion of the house, and was framed and built in accordance with the applicable building permit.
18. On April 24, 2012, Mr. Cluff visited the subject property a fourth time. He again found no violations.
19. On June 26, 2013, DCRA issued a Stop Work Order to the Applicant to stop construction on the subject property. On July 22, 2013, in an e-mail to the Applicant's designer, the Zoning Administrator wrote that "in the course of partial demolition of a structure, one needs to maintain at least four feet of the height of first floor to preserve a nonconforming condition..." Mr. LeGrant noted that this was an unwritten rule that his office had been following "for the past three years."
20. On August 1, 2013, the Zoning Administrator issued a final written determination that because the Applicant had removed the damaged walls, the project was now considered completely new construction, and the front powder room (herein referred to as the "Front Room"), which was substantially completed at this time, was no longer a legal nonconforming structure and must be removed or a variance must be applied for in order to be permitted to remain as is.

***The Unique Condition of the Subject Property***

21. The legally nonconforming covered porch was constructed along with the original house in or around 1930. Therefore, the porch existed sixty years before the adoption of the Wesley Height's Overlay front-yard restrictions. The Porch became a legally

nonconforming structure in 1992. While the Applicant had no real need to enclose this porch, as they had plenty of rear yard space available to utilize their allotted Gross Floor Area, it decided to do so based on the historical existence of this nonconforming feature.

22. The Applicant's Building Permit included the conversion of the pre-existing porch into the current powder room portion of the house, and construction of the Front Room was substantially completed approximately four months before the Zoning Administrator made his determination that the removal of the walls on the west side of the house made the Front Room non-compliant.
23. The structural walls which were originally intended to be retained were found by the Applicant, as later confirmed by his engineer, to be structurally unsound due to rot, mold, and termite damage. Although these walls were not in the area of the legally nonconforming porch, removal of them triggered the Zoning Administrator's eventual decision to re-characterize the project as new construction and deem the already-built Front Room to be in violation of the side yard and front yard setbacks.
24. The "four-foot" rule that the Zoning Administrator has used for the past three years to determine what is and is not a full demolition is not written law or regulation and is somewhat ambiguous as it applied to this particular property and the Front Room. Therefore, it was a unique condition that the Applicant found himself in of having the entire character of the project being changed from an addition to new construction *after* the new structure, including the Front Room, was substantially constructed.
25. The Applicant relied on the positive findings and recommendations of DCRA inspector Mr. Cluff, in continuing construction of the new house and the Front Room, and apparently had no indication that removal of the walls in February , 2012, would cause the Zoning Administrator to rule the previously legal nonconforming porch as no longer a legally nonconforming structure.
26. The removal of the subject walls constituted no ascertainable change to the appearance of the new dwelling, and the retention of those walls provided no benefit to the project, the City, or to any neighbor. It was an additional unique situation that removal of these walls impacted the legally nonconforming nature of the otherwise completely unrelated covered porch/Front Room.

***The Unique Condition Resulted in a Practical Difficulty***

27. If the Applicant were required to remove the Front Room and relocate the powder room somewhere on the first floor, the Applicant estimates that it would cost them approximately \$32,875.00.
28. Removal of the Front Room would require significant demolition of a portion of the just-completed house and repair of the open wall in that location.

29.    The powder room located within the Front Room is not only the only bathroom on the first floor, but it is the only bathroom in the house that is not accessed through an existing bedroom.

***Public Good and Integrity of the Zone Plan***

30.    The granting of relief would merely allow the continued existence of what was, until a few months ago, a legally nonconforming structure that had existed since the 1930's - about sixty (60) years prior to the adoption of the Wesley Heights Overlay's front yard setback requirement.
31.    Sun studies provided by the Applicant show that due to the location of the Front Room on the northwest corner of the structure, the Front Room has minimal impact on the light and air to the Bakers' property. In addition, the sun studies were developed without consideration of the extensive tree canopy on Lowell Street and in the Applicant's front yard, and the tree in front of the Bakers' bay window.
32.    The sun study shows that closing in the pre-existing covered porch had almost no impact at all on the amount of light and air coming through the Applicant's property to the Bakers' property, even without considering the extensive tree canopy that also impacts the light and air to the Bakers' property to a much greater degree than the Front Room.
33.    The Wesley Heights Overlay front yard setback requirement is a function of the existing front building lines on each block, so that at any given time about half of all the properties on a block may have nonconforming structures in their front yards.
34.    Lowell Street has a ninety (90) foot right-of-way, and the Front Room is set back about thirty (30) feet from the edge of the curb in front of the Applicant's house, and for most of the year the Front Room is almost entirely screened by the large, old Japanese Cherry Whipping tree on the subject property and other vegetation on Lowell Street.
35.    The new Front Room is almost two (2) feet smaller in height and about 28 feet smaller in footprint than the previously existing covered porch.
36.    The Board received thirteen (13) letters of support from neighbors within two hundred (200) feet of the subject property.

**CONCLUSIONS OF LAW**

The Board is authorized to grant variances from the strict application of the Zoning Regulations where "by reason of exceptional narrowness, shallowness, or shape of a specific property. . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in

peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property.. ” D.C. Code 0 6-641.07(g)(3) (2001 Ed.), 11 DCMR § 3103.2.

Where an applicant seeks an area variance, as here, the above standard of “practical difficulties” applies, with the “undue hardship” standard applying only to use variances. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. App. 1972). Additionally, variance relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map”. *Id.*

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property is unique because of its size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1 164, 1 167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* At 1 170.

The “exceptional situation or condition” of a property can arise out of “events extraneous to the land,” including the zoning history of the property. *See, e.g. De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978), and *see Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979). *See also BZA Order No. 17264* (2005).

The Board concludes that the Application satisfies the requirements necessary for variance relief, as follows:

The Board concludes that the property is subject to the following unique conditions and circumstance: (i) the rot, mold, and termite damage to the structural walls, which were originally intended to be retained, and then removed once the Applicant discovered their unsafe condition; and (ii) the unique zoning history of the property, including the existence of the nonconforming front porch sixty (60) years prior to the adoption of the Wesley Heights Overlay, and the permitting and inspection history which led to the Applicant to construct the Front Room in reliance on both the previous existence of the nonconforming porch, as well as DCRA’s actions in first approving the Applicant’s request to convert the porch to a closed-up section of the structure, and then inspecting the property numerous times during construction without noting any concerns about the removal of the structural walls and the possible impact thereof on the status of the nonconforming structure. These situations and conditions constitute a confluence of unique conditions and situations with the subject property which together resulted in a practical difficulty to the Applicant. Furthermore, the Applicant constructed the Front Room according to approved building permit plans several months before the Zoning Administrator determined that the characterization of the project had been altered from an addition to new construction because of the removal of certain structural walls in a location completely unrelated to the nonconforming structure; i.e., the ruling which brought the Applicant here appears to be a

technicality and if he had preserved the damaged walls on the side of the house, the Front Room would have still been permitted as a matter of right.

The Board concludes that complying with the Zoning Regulations by removing the Front Room and all of the significant, costly construction work which that would entail would be a practical difficulty to the Applicant.

The Board further finds that variance relief can be granted to the Applicant without substantial detriment to the public good or the integrity of the zone plan. The party opponent submitted considerable documentation, most of which related to matters which were not before the Board as part of this application. Regarding the granting of the requested relief, the Applicant showed with convincing evidence that the Front Room has only a minimal impact on the light and air to the Bakers' property, and the party opponent failed to rebut such evidence.

The existing nonconforming structure has existed in this location for about eighty (80) years, and while the covered porch was closed in and made part of the interior of the structure, the structure was also reduced in size by lowering the height by almost two (2) feet and removing a 28 square foot portion of the footprint in the area closest to the party opponent's property. The party opponent claimed that the removal of that portion of the footprint was not a benefit to them because the Applicant inserted HVAC equipment in that area. To the contrary, the removal of this portion of the nonconforming structure allowed the Applicant to move the HVAC equipment further away from the party opponent's property than it otherwise would have been, so this was actually a benefit to the party opponent's property. The party opponent also claimed that the closing in of the previous porch caused a "severe" reduction in light and air to their property, but the Applicant showed with its sun studies and photos that the nonconforming Front Room as a whole, had very little impact on the light and air to the Bakers' property, amounting to only a short amount of time very early in the morning, four months out of the year - a time during which there is considerable tree canopy coverage impacting the overall light and air situation. In fact, it appears that what little shadow there is resulting from the Front Room is redundant, as the Front Room is separated from direct sunlight first by the matter-of-right house, and then for most of the year by the extensive tree canopy.

The Office of Planning recommended denial of the Application, claiming that the Applicant did not meet any of the three required prongs of the variance test. First, the Office of Planning stated that the Applicant did not meet the variance test because there was nothing unique about the size or shape of the Applicant's property. The Office of Planning, however, did not consider the existence of the previous structure nor the zoning and permitting history of the property. Regarding practical difficulty, the Office of Planning misstated what the Applicant was claiming to be the practical difficulty. The Office of Planning claimed that the Applicant was claiming that DCRA's determination to re-characterize the work as new construction was the practical difficulty, but the practical difficulty is the fact that in order to comply with the strict application of the Zoning Regulations, the Applicant must remove the Front Room, at great expense to the Applicant. Finally, regarding the substantial detriment to the public good and the integrity of the zone plan, the Office of Planning admitted that it did not really know if the closing in of the porch impacted the light and air to the Bakers' property, and it failed to consider that "encroaching" front porches and portions of houses in the Wesley Heights Overlay front yard

setback are common occurrences in the Wesley Heights Overlay area, as they must be as a result of the front yard setback measurement being a function of the average of the existing front yard setbacks on each block; i.e., adoption of the Overlay immediately made about half of the homes in Wesley Heights nonconforming as a result of their front yard encroachments.

ANC 3D also recommended denial of the Application, based on various factors. First, the ANC noted that the Applicant's construction deviated from approved construction plans. While this is technically true, that deviation appeared to be very minor and inconsequential to any zoning aspect of the property until several months after the Front Room was already constructed. It is understandable that the Applicant would not consider that removing damaged walls that were never to be seen anyway would somehow impact the legality of the nonconforming structure in another location, particularly when the Zoning Administrator noted that this is not a written rule and is merely his interpretation of what constitutes full demolition and an interpretation which he has only followed for the last three (3) years. It would be a high burden indeed to expect the Applicant to first anticipate this interpretation in advance of removing the damaged walls and second, to know before they begin any demolition that the wood behind the existing walls would show such damage. Second, the ANC claims that the Zoning Administrator noted that the Applicant "knowingly" violated Sections 2000.4, 2001.2, and 2001.3 of the Zoning Regulations. But (i) 2000.4 relates specifically to the continuation of nonconforming *uses*, which clearly this is not; (ii) 2001.2 is merely an introductory paragraph which provides that alterations may be made to a nonconforming structure subject to certain conditions, so there is nothing in this paragraph to be violated; and (iii) 2001.3 was not violated either, because the Applicant was first lawfully replacing an existing nonconforming structure and, after the ZA's re-characterization, was requesting variance relief for new construction. Third, the ANC recommended that the Applicant revise the Application to seek variance relief for the side yard, rather than special exception relief, which the Applicant then did. Fourth, the ANC claimed the Applicant has not met the burden for variance relief, but the ANC provided no specific information to rebut our conclusion above that the Applicant has indeed satisfied the burden of proof for the variance test. Finally, fifth, the ANC states that the Front Room visually intrudes upon the harmonious design of houses falling within the Wesley Heights Overlay, reduces the access to light and air of the neighboring property, and reduces the Bakers' ability to add to their property within existing zoning rules, and that the new structure is inconsistent with the provisions of the Zoning Regulations for the Wesley Heights Overlay District. The Board found, however that the Front Room does not visually intrude upon the harmonious design of houses, since the nonconforming aspect of the structure pre-dates the adoption of the Overlay by sixty years, is mostly screened from view by a large tree, and is still thirty feet from the curb. The Board also found that any impact to the light and air of the Bakers' property is minimal, if at all, and is most likely redundant as a result of the extensive tree canopy and the position of the matter-of-right structure between the Front Room and the direct line of sunlight. The Board does not agree with the third comment in the ANC's fifth complaint, because granting relief in this case will not impact the Bakers' ability, or inability, to add to their property. Finally, in direct contrast to the ANC's contention, the Zoning Administrator informed this ANC directly that, other than the front yard setback, the new structure complied in all respects with the provisions of the Wesley Heights Overlay District, including the reduced lot occupancy requirement of thirty percent (30%) and the maximum permitted Gross Floor Area of 5,000 square feet.

For the reasons stated above, the Board concludes that the applicant has met its burden of proof. It is hereby **ORDERED** that the application is **GRANTED**.

**VOTE: 4-0** (Lloyd Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Robert Miller to APPROVE).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

The majority of the Board members approved the issuance of this order.

**ATTESTED BY:** \_\_\_\_\_

**FINAL DATE OF ORDER:** \_\_\_\_\_

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT. SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

**Item #2**

**Structural Engineer's Report**

**NEUBAUER CONSULTING ENGINEERS, P.A.**

**4701 SANGAMORE ROAD, SUITE N290, BETHESDA, MD 20816  
(301) 263-2727 FAX (301) 263-1039**

January 3, 2014

**Via E-mail Delivery**

Lloyd Jordan, Chairman  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW  
Suite 210S  
Washington, DC 20001

Re: Statement of Activities and Analysis;  
4540 Lowell Street, NW; BZA Variance  
Application No. 18659.

Dear Mr. Chairman and Board:

I have been retained by Andreas Xenophontos and Elodie Goirand to serve as the consulting structural engineer for the reconstruction of their home at 4540 Lowell Street, NW (the "Project"), and I have served in that capacity since January 18, 2013. I am not the original engineer of record for the project. Included in my services since that time was engineering for the upstairs deck framing, review of proposed member sizes, some alterations to post locations, and two site visits during the course of construction.

One of the functions I have served was to provide Andreas and Elodie with an analysis of the structural condition of certain portions of the existing structure which were originally to be retained, but which were later removed as a result of new information. In particular, I reviewed photographs of several portions of exposed wood framed walls located at the front of the house and the west wall of the house. In my experience, analyzing existing structural conditions from photographs is not uncommon.

After the wood stud walls were exposed during the Project, it became apparent that those walls would not be compatible with the permit plans for the Project, including the new front and side facades approved in the Project's building permit. One reason for this conclusion is the advanced level of rot and deterioration from the elements over time. From my review of the photographs, I determined that there was a significant degree of damage to the wood due to water intrusion and mold growth. This condition is best represented by the attached photographs – which show portions of the wood framing in the west wall.

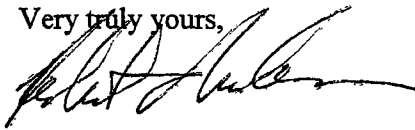
NEUBAUER CONSULTING ENGINEERS, P.A.

January 3, 2014  
Lloyd Jordan, Chairman  
Board of Zoning Adjustment

page 2.

Based on the above analysis, it was quite clear that the walls that were originally intended to be retained, if allowed to remain, would negatively impact the integrity of the structure. Furthermore, the existing wall framing was in direct conflict with the approved structural drawings. Therefore, in my professional opinion, those walls had to be removed and replaced.

Very truly yours,



Robert Neubauer, P.E.

Enclosures



File: reside13/4540 Lowell St.4



• EXISTING WALL CONDITION

①

9



\* EXISTING WALL CONDITION  
BEFORE REMOVAL

9

(10)



+ EXISTING WALL CONDITION  
WEST SIDE BEFORE REMOVAL + (10)

picture (8)



+ EXISTING ROOF CONDITION  
OF PORCH BEFORE RENOV.

(8)

**Item #3**

**Sun Study and Photos of Tree Canopy and Foliage**

Explanation of Sun Study

As requested, the Applicant is submitting a more detailed Sun Study. It is important to note, however, that the Sun Study, as is customary practice, does not include consideration of the tree canopy affecting the sunlight to the Bakers' front bay window.

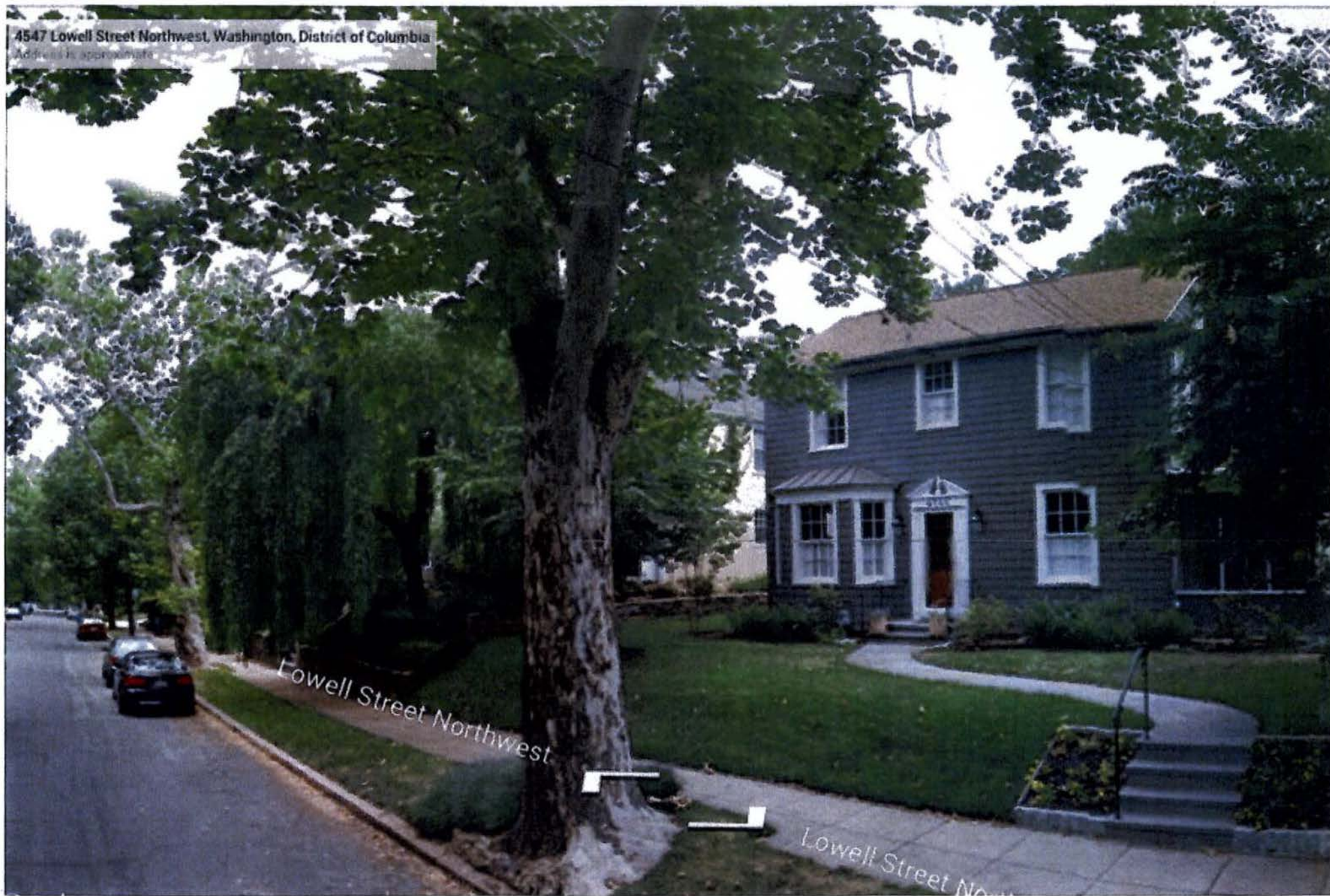
This is a critical consideration, since Lowell Street, in general, and the Bakers' property specifically, is subject to extremely thick tree canopy and foliage that effectively makes the sun study meaningless, other than to show how the Bakers' property would be affected by the Front Room if this extensive tree canopy did not exist.

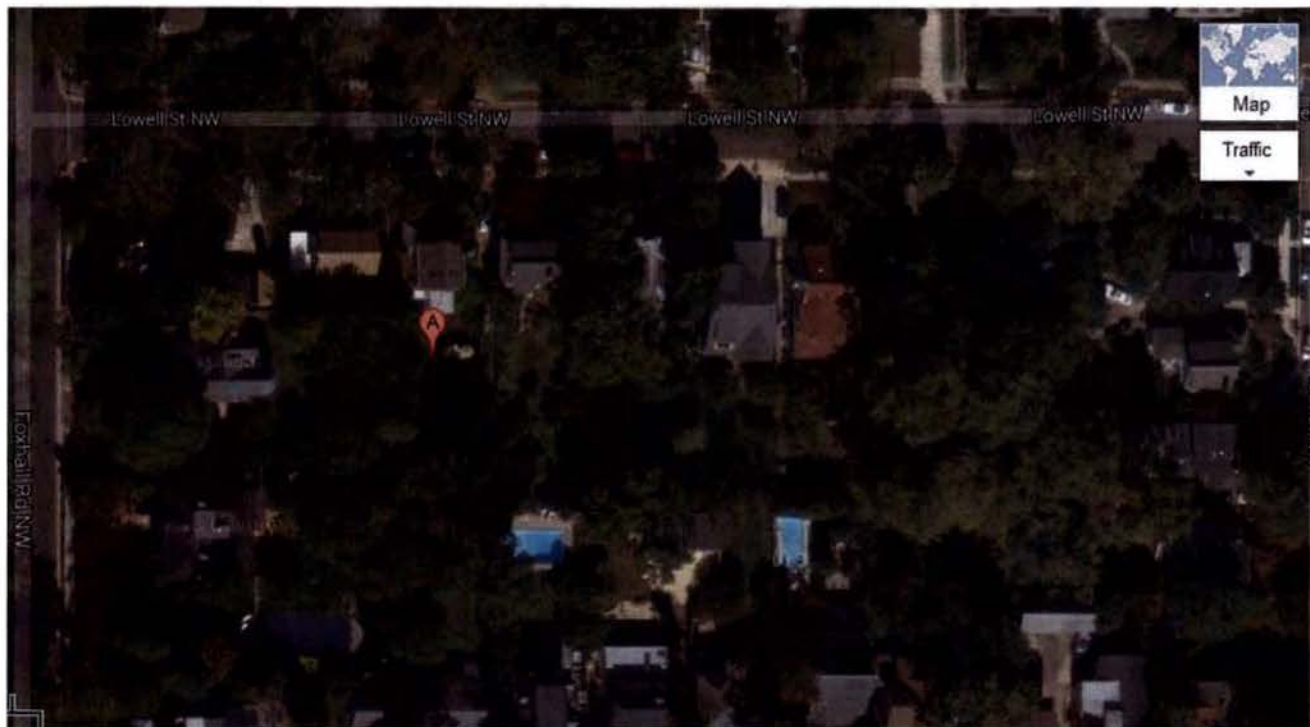
At the hearing and in their filings, the Bakers have represented that they have had a "severe" reduction in the amount of light to their property, merely as a result of the conversion of the pre-existing covered porch into a closed structure. The attached sun studies show clearly that for eight (8) months out of the year, the Bakers do not receive any direct sunlight into their front bay window. And for the other four months, the sun they received through the area of the former open porch was limited to early morning and even on the best day, was completed by 6:50 a.m.

In addition to this, the time at which sunlight was in a direction which might go through the Applicant's front porch happens to coincide with the time of the year at which the foliage and tree canopy is the greatest volume.

What this study proves, along with the attached photos, is that the Bakers' front bay window received almost no sunlight anyway, either with the pre-existing porch or the current enclosed structure.

This photo represents the spring/summer foliage to the east of the party opponent's front bay window, showing a wall of foliage blocking the sun in the area of the Applicant's covered porch.





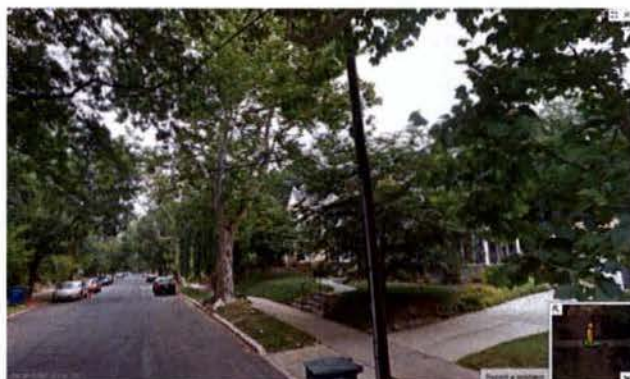
**TREE CANOPY OF LOWELL STREET**  
**A: MARKS 4540 LOWELL STREET**



**STREET VIEW OF LOWELL**



**STREET VIEW OF LOWELL**



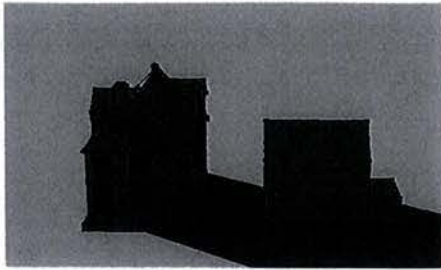
**STREET VIEW OF LOWELL**



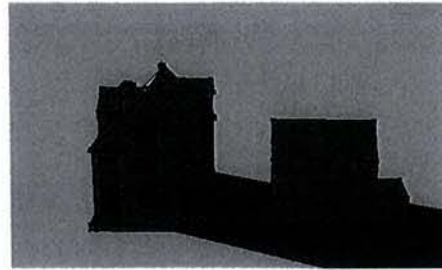
**STREET VIEW OF LOWELL**



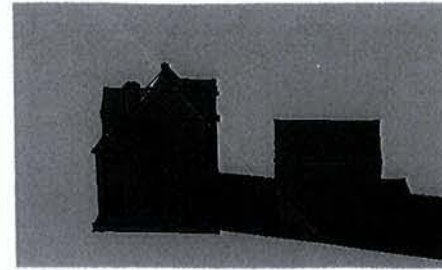
**STREET VIEW OF LOWELL**



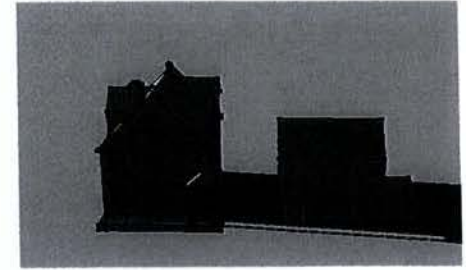
JANUARY 1st 2014  
SUNRISE - 7:27 AM  
**NO SUNLIGHT**



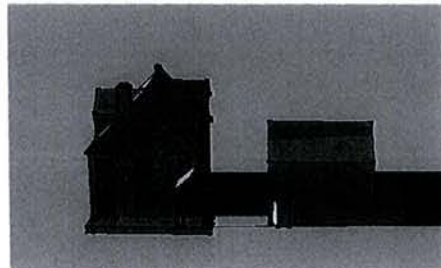
FEBRUARY 1st, 2014  
SUNRISE - 7:14 AM  
**NO SUNLIGHT**



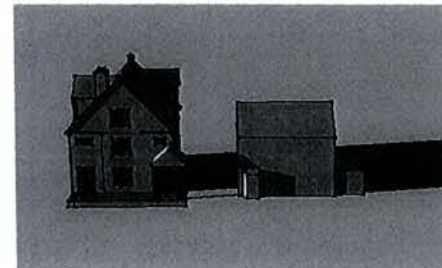
MARCH 1st, 2014  
SUNRISE - 6:41 AM  
**NO SUNLIGHT**



APRIL 1st, 2014  
SUNRISE - 6:53 AM  
**NO SUNLIGHT**



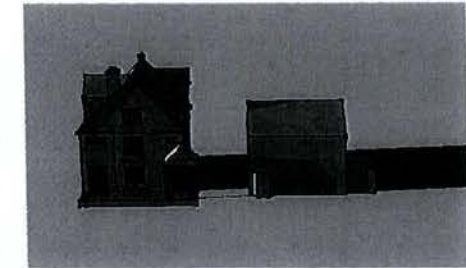
MAY 1st, 2014  
SUNRISE - 6:10 AM  
**6:10 - 6:40 SUNLIGHT**



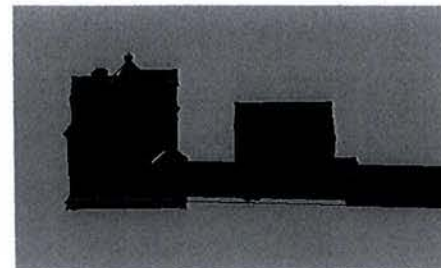
JUNE 1st, 2014  
SUNRISE - 5:45 AM  
**5:45 - 6:50 SUNLIGHT**



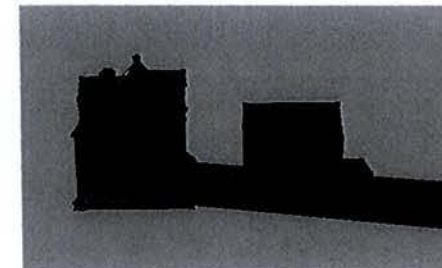
JULY 1st, 2014  
SUNRISE - 5:47 AM  
**5:47 - 6:39 SUNLIGHT**



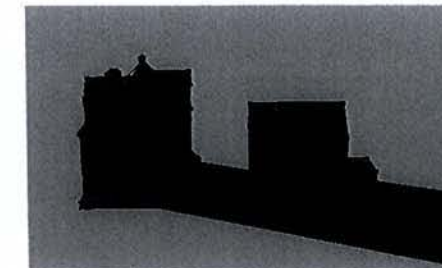
AUGUST 1st, 2014  
SUNRISE - 6:09 AM  
**6:09 - 6:38 SUNLIGHT**



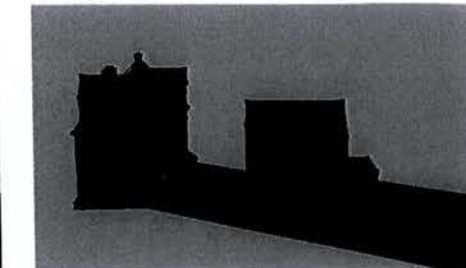
SEPTEMBER 1st, 2014  
SUNRISE - 6:37 AM  
**NO SUNLIGHT**



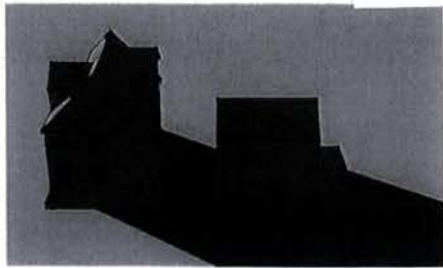
OCTOBER 1st, 2014  
SUNRISE - 7:04 AM  
**NO SUNLIGHT**



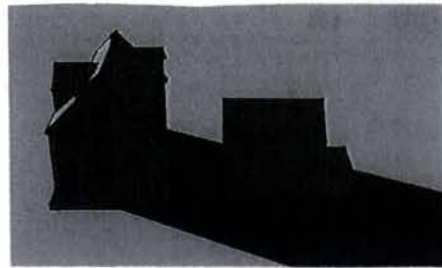
NOVEMBER 1st, 2014  
SUNRISE - 6:36 AM  
**NO SUNLIGHT**



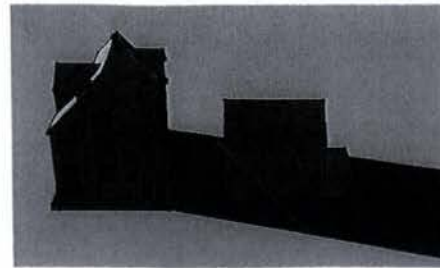
DECEMBER 1st, 2014  
SUNRISE - 7:08 AM  
**NO SUNLIGHT**



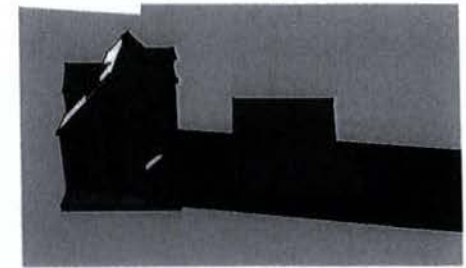
JANUARY 1st 2014  
SUNRISE - 7:27 AM  
**NO SUNLIGHT**



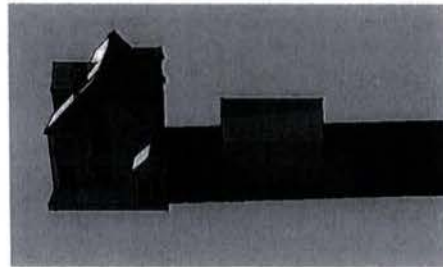
FEBRUARY 1st, 2014  
SUNRISE - 7:14 AM  
**NO SUNLIGHT**



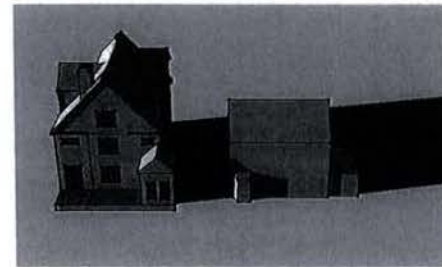
MARCH 1st, 2014  
SUNRISE - 6:41 AM  
**NO SUNLIGHT**



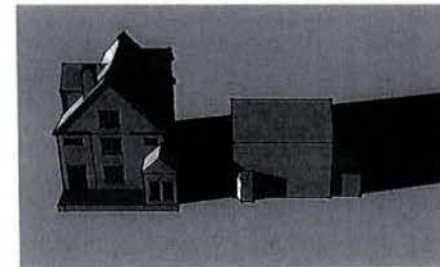
APRIL 1st, 2014  
SUNRISE - 6:53 AM  
**NO SUNLIGHT**



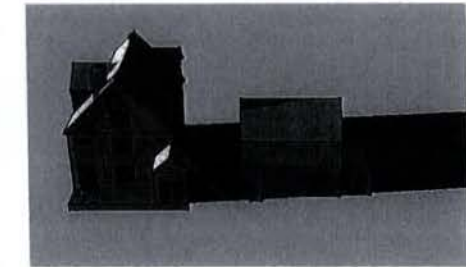
MAY 1st, 2014  
SUNRISE - 6:10 AM  
**NO SUNLIGHT**



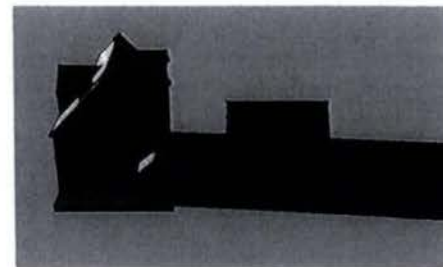
JUNE 1st, 2014  
SUNRISE - 5:45 AM  
**5:45 - 6:00 SUNLIGHT**



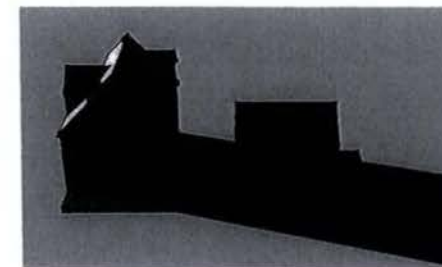
JULY 1st, 2014  
SUNRISE - 5:47 AM  
**5:47 - 6:10 SUNLIGHT**



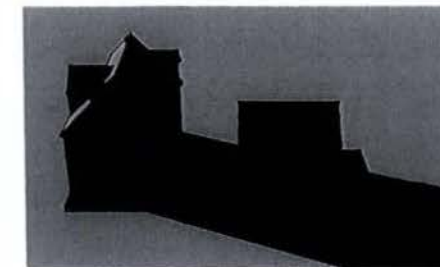
AUGUST 1st, 2014  
SUNRISE - 6:09 AM  
**NO SUNLIGHT**



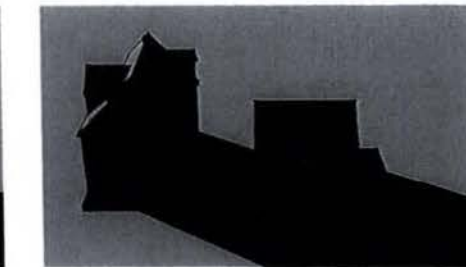
SEPTEMEBER 1st, 2014  
SUNRISE - 6:37 AM  
**NO SUNLIGHT**



OCTOBER 1st, 2014  
SUNRISE - 7:04 AM  
**NO SUNLIGHT**



NOVEMBER 1st, 2014  
SUNRISE - 6:36 AM  
**NO SUNLIGHT**



DECEMBER 1st, 2014  
SUNRISE - 7:08 AM  
**NO SUNLIGHT**

**Item #4**

**Elevation Showing the Reduced Height of the Roof**



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INDICATES UNCHANGED 1ST FLOOR LEVEL  
TO PROVIDE EXISTING/APPROVED HEIGHTS.

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 8, 2014, a copy of the Applicant's Post-Hearing Submission was served by first-class mail to the following

Stephen Gyor  
District of Columbia Office of Planning  
1100 4th Street SW, Suite E650  
Washington, DC 20024

Penny Pagano  
Chair, Advisory Neighborhood Commission (ANC) 3D  
PO Box 40486  
Palisades Station  
Washington, D C 20016

Ed Donohue, Esq  
Donohue & Stearns,  
117 Oronoco Street  
Alexandria, VA 22314

A handwritten signature in black ink, appearing to read 'Martin P. Sullivan', is written over a horizontal line.

Martin P Sullivan